

Before the  
Federal Communications Commission  
Washington, D.C. 20554

2001 APR -2 P 4: 26

In the Matter of )

Request for Review of the )

Decision of the )

Universal Service Administrator by )

Children's Village Academy )

Kinston, North Carolina )

Federal-State Joint Board on )

Universal Service )

Changes to the Board of Directors of the )

National Exchange Carrier Association, Inc. )

File No. SLD-204351

CC Docket No. 96-45✓

CC Docket No. 97-21

## ORDER

Adopted: March 29, 2001

Released: March 30, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Children's Village Academy (CVA), Kinston, North Carolina.<sup>1</sup> CVA seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Company (Administrator) pursuant to a funding request for internal connection services.<sup>2</sup> For the reasons set forth below, we deny CVA's appeal.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup> Once the applicant has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, it must file a FCC Form 471 application to

<sup>1</sup> Letter from Monte Nardy, Children's Village Academy, Kinston, North Carolina, to the Federal Communications Commission, filed October 26, 2000 (Request for Review).

<sup>2</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Monte Nardy, Children's Village Academy, issued September 29, 2000 (Funding Commitment Decision Letter).

<sup>3</sup> 47 C.F.R. §§ 54.502, 45.503.

<sup>4</sup> 47 C.F.R. § 54.504 (b)(1), (b)(3).

notify the Administrator of the services that have been ordered, the carrier with whom it has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup> Approval of the application is contingent upon the filing of a FCC Form 471, and funding commitment decisions are based on information provided by the applicant.

3. On the FCC Form 470, applicants must attest that any support they receive is conditional upon their “securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.”<sup>6</sup> Similarly, on the FCC Form 471, applicants must certify that they have secured access “to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.”<sup>7</sup> In the Commission’s May 8, 1997 *Universal Service Order*, the Commission stated that applicants for schools and libraries discounts would be required to certify in their requests for services that “all of the necessary funding in the current funding year has been budgeted and will have been approved to pay for the ‘non-discount’ portion of requested connections and services as well as any necessary hardware, software, and to undertake the necessary staff training required in time to use the services effectively.”<sup>8</sup> The necessary resources certification requires applicants to examine their technology needs and available technological and budgetary resources before making funding requests, in order to ensure that applicants will be able to make effective use of any discounted services they receive. The review of these certifications by SLD to determine whether applicants have the necessary resources to make effective use of the services that they request is an integral part of SLD’s responsibility for reviewing funding applications to ensure

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<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> See Instructions for Completing the Schools and Libraries Universal Service, Description of Services Requested and Certification Form (FCC Form 470 Instructions), OMB Approval No. 3060-0806, at Block 5, Item 23 (September 1999); see also SLD website, <<http://www.sl.universalservice.org>>.

<sup>7</sup> See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification (FCC Form 471 Instructions), OMB Approval No. 3060-0806, at Block 6, Item 25 (September 1999); see also SLD website, <<http://www.sl.universalservice.org>>.

<sup>8</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 577 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied in Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. granted in GTE Service Corp. v. FCC*, 120 S.Ct. 2214 (June 5, 2000), *cert. denied in AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000). See also 47 C.F.R. § 54.504(b)(1) (requiring applicants to provide information about equipment, services, training and other facilities in place to make use of the services requested) and 47 C.F.R. § 54.504(b)(2) (requiring that each applicant’s FCC Form 470 certify that “all of the necessary funding in the current funding year has been budgeted and approved to pay for the ‘non-discount’ portion of requested connections and services as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively . . .”). These requirements are referred to collectively hereinafter as the “necessary resources certifications.”

compliance with statutory requirements and Commission rules.<sup>9</sup> Also, SLD's review of applicants' necessary resources certifications is an important means to curb waste, fraud, and abuse in the schools and libraries universal service support mechanism.<sup>10</sup>

4. CVA filed its FCC Form 471 seeking discounts for services for Funding Year 3 of the universal service support mechanism on April 13, 1998.<sup>11</sup> The record indicates that SLD made numerous attempts to gain additional information from CVA from June, 2000 to August, 2000. By letter dated September 29, 2000, SLD denied CVA's funding requests.<sup>12</sup> SLD explained that the applicant was unable to verify that adequate resources were secured to make effective use of the discounts for the funding requests.<sup>13</sup> In addition, SLD sent a letter to CVA with a further explanation of its denial decision; SLD stated that it was unable to determine whether the applicant had secured adequate resources for hardware, software and maintenance.<sup>14</sup> Thus, SLD determined that CVA did not qualify for funding under the Commission's rules governing the universal support mechanism.<sup>15</sup>

5. In response, CVA filed the instant Request for Review with the Commission.<sup>16</sup> In its Request for Review, CVA argues that it timely responded to all requests for information by SLD. CVA states that SLD only requested Block 6, Item 25 Certification, and, had SLD requested further information to verify that adequate resources had been secured, it could have provided such information. CVA asks the Commission to instruct SLD to request additional information from CVA so that CVA can verify that it has adequate resources, and use such new information to review the denied Funding Request Numbers (FRNs).

6. We have reviewed the record before us and conclude that SLD properly denied CVA's funding request. On June 25, 2000, SLD requested additional information from CVA regarding CVA's FCC Form Block 6, Item 25 Certification.<sup>17</sup> On July 7, 2000, CVA responded by fax, indicating that it had 10 computers in place and expected to have 60 in place using a hardware budget of \$18,000. CVA

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<sup>9</sup> *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 423, 430, para. 14 (2000).

<sup>10</sup> See 47 C.F.R. § 54.702(h) (requiring that the Administrator's annual report to the Commission detail the Administrator's "administrative action intended to prevent waste, fraud, and abuse").

<sup>11</sup> FCC Form 471, Children's Village Academy, filed April 13, 1998.

<sup>12</sup> See Funding Commitment Decision Letter.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Monte Nardy, Children's Village Academy, dated November 28, 2000.

<sup>15</sup> *Id.*

<sup>16</sup> Request for Review.

<sup>17</sup> Fax from Schools and Libraries Division, Universal Service Administrative Company, to Children's Village Academy, dated July 26, 2000 (Request for Additional Information).

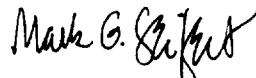
stated that it planned to acquire site licensing agreements for software programs, and it planned to raise money through contributions and donations to pay for its share of the cost. With respect to maintenance of the equipment, CVA stated only that the expense was a budget item, without pointing to any specific information.

7. Upon receipt of CVA's Item 25 Certification, SLD contacted CVA for further information concerning the Item 25 Certification SLD by fax dated July 26, 2000. Among other things, SLD inquired about the specific resources in place to obtain hardware, the number of servers and network drops being requested, and what, if any, site licensees CVA had or planned to obtain. SLD also inquired about the specific resources in place for maintenance of the equipment and whether CVA had secured funds for its share of the E-rate program. CVA responded by fax dated August 3, 2000 stating that it had allotted \$54,356.44 from its core budget for the e-rate program. Upon receipt of this fax, SLD then attempted to contact CVA by phone. CVA's representative indicated that she was busy and instructed SLD to process the application with the information already provided.

8. CVA's claim that SLD did not request information to verify that adequate resources had been secured is without basis. SLD contacted CVA over a two-month period in an effort to gain additional information concerning CVA's application. CVA had an obligation to respond fully to SLD's request for information. In requesting additional information to verify CVA's Block 6, Item 25 Certification, SLD gave CVA an adequate opportunity to prove that it had secured adequate resources to make effective use of the eligible services requested. SLD was forced to use the information it had, and based on the information provided to SLD by CVA, SLD reasonably determined that CVA did not have adequate resources for hardware, software and maintenance.<sup>18</sup> For example, CVA indicated that it planned to raise money through contributions and donations to pay for its share of the e-rate cost; CVA did not provide to SLD any evidence that the such donations and contributions had been secured. CVA also stated that it planned to add 50 computers on a budget of only \$18,000. The information provided by CVA indicates that CVA's available technological and budgetary resources were inadequate, thus CVA failed to demonstrate that it possessed the necessary resources to make effective use of the services for which it requested support. We, therefore, deny CVA's Request for Review.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Letter of Appeal filed October 26, 2000, by the Children's Village Academy, Kinston, North Carolina, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifer  
Deputy Chief, Accounting Policy Division

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<sup>18</sup> See para. 3 *supra*.